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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/435,461	11/05/1999	WADE DYSON	GC593	5249

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EXAMINER

MELLER, MICHAEL V

ART UNIT PAPER NUMBER

1651

DATE MAILED: 04/01/2002

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/435,461	DYSON ET AL.	
	Examiner Michael V. Meller	Art Unit 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 February 2002.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,4,6,7,10-13,18 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1, 4, 6, 7, 10-13, 18 and 21-23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

The election of species is maintained for the reasons of record.

Claim Rejections - 35 USC § 102

Claims 1, 6, 7, 10-13, and 21-23 stand rejected under 35 U.S.C. 102(b) as being anticipated by WO 97/27237('237) or WO 99/01604 ('604) for the reasons of record and for the reasons which follow.

Applicants argue that '604 and '237 would not produce 10%, 50% or 100% greater absorbance in a UV and/or MB assay than a control sample without polyesterase. Applicants refer the examiner to page 9, lines 5-19 for support of their argument that '604 and '237 do not provide any results for UV and/or MB assays and do not teach the use of such standards or methods for selecting enzymes that will produce the desired modifications. Applicants argue that the ETE and BEB standards used in '237 and '604 are based solely upon mono- and di-ester molecule cleavages and therefore cannot predict whether particular enzymes will have activity against large repeating polymer fibers.

While these comments are noted, this does not negate the anticipation of the claimed subject matter by the references. Simply because applicants believe that '237 and '604 cannot be used to predict whether certain enzymes possess certain properties does not prove that the references are invalid in this rejection.

First of all the claims are not drawn to an assay. Secondly, the enzymes in the references inherently possess the claimed properties. The enzymes come from the same source as applicant and are the same type of enzyme. Simply because applicant feels that predictability cannot be trusted with the properties of the enzymes in the references, does not negate the value of the references and their inherent properties of the enzymes being one and the same with the claimed enzymes. Applicant has not proven categorically that the enzymes of the references cannot be in any way the same enzymes as in the instant invention, applicant has only cast doubt, which is not enough. The burden is on the applicant to prove that the enzyme in the references is not one and the same as the enzymes instantly claimed. The Office is not equipped to perform such tests and side-by-side comparisons.

Claim Rejections - 35 USC § 103

Claim 4 stands rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 97/27237 ('237) or WO 99/01604 ('604) for the reasons of record and for the reasons which follow.

Applicants' arguments are noted but the references do not state whether there are stains on the fabrics or not. Even if they are proven to have stains on them, it would have been obvious to use the claimed invention on fabrics that have stains for many of the purposes as outlined by applicant with regard to the cited references.

Claims 18 stands rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/27237 ('237) or WO 99/01604 ('604) taken with GB 2307695 (GB) for the reasons of record and for the reasons which follow.

Applicants argue the same arguments as above and thus the same response is reiterated here.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

MVM
March 28, 2002



DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1651